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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:

Edward PINTO

Serial No.: 09/522,481

Filed: March 10, 2000

For: **SYSTEM AND METHOD FOR
PROCESSING A SECURED
COLLATERAL LOAN (as amended)**

Art Unit: 3624

Examiner: Jeffrey PWU

Customer No. **23235**

Docket No. LR0001

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APPELLANT'S SUPPLEMENTAL BRIEF UNDER 37 CFR 1.193(b)(2)

I. Real Party in Interest

Lenders Residential Asset Company LLC
5608 Pioneer Lane
Bethesda, MD 20816

II. Related Appeals and Interferences

No other appeals or interferences are currently known to Appellant that will directly affect, be directly affected by, or have a bearing on the decision to be rendered by the Board of Patent Appeals and Interferences in the present appeal.

III. Status of Claims

Claims 1-20 are pending in the application. No claims have been allowed. Claims 1-20 stand rejected under 35 U.S.C. §101 as failing to claim statutory subject matter, and under 35 U.S.C. §112 as failing to provide a written description that enables one to use the claimed invention. On June 25, 2003, Appellants appealed from the final rejection by filing a Notice of Appeal of all pending claims. and September 25, 2003 an Appeal Brief was filed. On December 16, 2003 a subsequent office action was mailed withdrawing all previous grounds of rejection and asserting the rejections under 35 U.S.C. §101 and 35 U.S.C. §112 stated above.

IV. Status of Amendments

In response to the Final Office Action mailed March 25, 2003, Appellants provided in a Response to Final Office dated May 21, 2003 and a Supplemental Response to Final Office Action dated May 29, 2003 an amendment to the Title and remarks that addressed the rejections under 35 U.S.C. § 102 and did not further amend the claims. The rejections under 35 U.S.C. § 102 have subsequently been withdrawn.

All claim amendments have been entered, and Claims 1-20, as originally filed or as previously amended, remain in the application for consideration in this appeal.

V. Summary of the Invention

Briefly, the invention is directed toward a system and method for loan processing that streamlines loan processing, particularly for secured loans such as home equity, refinance and purchase money loans, to reduce the time required to make a loan from weeks to as little as one hour. (page 7, lines 23-25) At the time of filing the application, studies of the secured loan industry indicated that prior home equity loan processing systems average about seventeen days from application to closing, with refinance and purchase money loans taking significantly longer. Much of this time was lost in inefficient and duplicative processing steps and lack of control over the loan process resulting in pipeline losses. In general the steps to making a secured loan involve: getting information from a client or prospective

borrower; verifying the information; evaluating the information; preparing documents for signature; transmitting documents; signing the documents; and funding the loan. Due to governmental and regulatory limitations, funding may actually occur several days after the other steps. (Page 8, lines 18-24) These steps of processing information involve obtaining and analyzing credit reports as well as obtaining and analyzing FICO scores, valuation, and debt-to-income ratios. (Page 18, line 25) The present invention improves upon these processes not merely to automate the processes but to make their performance uniformly streamlined.

The invention of claim 1 is directed to a method of processing a secured loan illustrated, for example, in Fig. 3 and Fig. 4. The process is initiated by accepting a loan application 302 (e.g., MAKE APPLICATION in Fig. 4) from a borrower. The loan application includes at least the borrower's identity, collateral identity, and stated income of the borrower. (page 17, lines 6-7) A credit request 304 is generated (e.g., OBTAIN CREDIT REPORT/FICO in Fig. 4) based upon the borrower's identity to obtain a credit report 306, the credit report including credit information and credit score information. (page 17, line 22) A property evaluation database is accessed using the collateral identity. (page 13, line 24 through page 14, line 11) Based upon the credit report, a credit approval, collateral title underwriting approval, and income approval are generated. Loan documentation is generated and transmitted for signatures at closing (e.g., GENERATE LOAN DOCUMENTATION in Fig. 4).

The invention of claims 9 and 13 relate to loan processing systems. In claims 9 and 13 the systems include elements for obtaining a credit report 306 including credit score information. (page 17, line 22) In the system of claim 9, an underwriting matrix 501 is included to provide approval criteria enabling the system to automatically approve a loan. The system of claim 13 includes, among other things, means for underwriting title based upon the credit report (page 18, lines 5-19).

VI. Issues

1. Whether claims 1-20 define an invention to statutory subject matter under 35 U.S.C. §101.
2. Whether claims 1-20 are supported by a specification presented in sufficiently full, clear and concise terms such that one skilled in the art would know how to use the invention.
3. Whether claims 1-20 distinctly claim the subject matter which applicant regards as the invention, and therefore comply with 35 U.S.C. 112.

VII. Grouping of Claims

Because each of the claims includes different limitations and each limitation must claim both statutory subject matter and be supported by an enabling disclosure, it is believed that each of the claims stands or falls separately with respect to the current grounds of rejection.

VIII. Argument

A. Rejection of Claims 1-20 under 35 U.S.C. 101 is Improper

Accordingly, the rejection of dependent claims 1-20 is improper and it is respectfully requested that the Board overturn the rejection. The Examiner has stated that the claimed invention "has no specific and substantial credible utility".

As noted in the Examiner's rejection, 35 U.S.C. 101 requires that a claim must 1) describe a practical application of an algorithm or idea and 2) the claim must provide a limitation that enable a useful, concrete, tangible result.

In this case, we will assume, for the sake of argument, that the "idea" of claim 1 can be stated as "using FICO scores not only for their direct information value, but also for the indirect information that might be implied by a FICO score." This statement of the idea behind claim 1 arguably has no stated practical application. Further, this statement of an idea of claim 1 arguably does not state a tangible result.

In contrast, claim 1 captures this "idea" in sufficient detail that it is far from an attempt to claim the naked idea itself. Looking only within the metes and bounds of claim 1, it is clear that the method can be practically employed in a process of processing a secured loan. The method of claim 1 results in a concrete, tangible result of a closed loan. What person who has borrowed or lent money would not appreciate the practical value of a method for processing a loan, or the concrete result of a closed loan that obligates both the borrower and lender for months or years to come?

To the extent **credibility** of this asserted utility is in question, the Court of Customs and Patent Appeals stated in *In re Langer*:

As a matter of Patent Office practice, a specification which contains a disclosure of utility which corresponds in scope to the subject matter sought to be patented **must** be taken as sufficient to satisfy the utility requirement of §101 for the entire claimed subject matter unless there is a reason for one skilled in the art to question the objective truth of the statement of utility or its scope. (emphasis added).

The Examiner has failed to state any reason for questioning objective truth of Appellant's statements that the invention is useful for processing loans, that a credit report can be used effectively to predict willingness to repay a loan, ability to repay a loan, and therefore be an useful factor in making a decision as to whether to underwrite a loan. The Examiner's questions directed to how and why the invention works as claimed do not present any reason to question the objective truth of the statements made by Appellant. Accordingly, *In re Langer* mandates that the statements in the specification **must** be taken as sufficient.

Accordingly, Appellants request that the rejection of claims 1-20 under 35 U.S.C. § 101 be withdrawn.

B. Rejection of Claims 1-20 35 U.S.C. 112, First Paragraph is Improper

The Examiner has stated that the claimed invention is not supported by "credible asserted utility" or "a well established utility" and therefore one of skill in the art would not

know how to use the claimed invention. To be entirely clear, the invention would be useful in performing secured loan processing, as disclosed in the Title of the invention. Hence, the Title alone might impart some knowledge on one of skill in the art as to how to use the invention. The application also teaches this particular utility for the claimed invention in page 1, first paragraph, page 6, lines 25-26, page 7, line 23 through page 8, line 30, page 9, line 1 through line 13, among numerous other locations. It is believed that the utility of the claimed invention, e.g., using the claimed invention to process secured loans, is stated so frequently throughout the application that it is abundantly clear that any one skilled in the art would know how to use the invention. Hence, it is believed beyond question that the application at least asserts a use for the invention.

The Examiner also questions whether the asserted utility is "credible". Specifically, the examiner asserts that the specification lacks a description of:

- how collateral identity affects a loan application;
- how property valuation affects collateral identity;
- how a credit report affects the underwriting process;
- how a credit report can be used to predict a borrower's ability to repay a loan;
and
- how a credit report can be used to predict a borrower's future willingness to repay a loan.

The first two bullet items are described, among other places, within the body of claim 1 itself. The collateral identity is used to access a property valuation database. Using a property valuation in a loan application is, by itself, well known. With respect to the second item, the claims do not call for the collateral identity to be affected by the property valuation, hence, this cannot be a proper ground for rejection.

Admittedly, it is somewhat counter-intuitive to use a credit report, which relates to a credit history of the loan applicant, as the basis for underwriting, predicting ability to repay, and predicting willingness to repay. Underwriting has traditionally taken into account a large number of criteria beyond a credit report. Why, then, would one elect to use the credit report to determine whether to underwrite a loan?

It should be noted, however, that Appellant is not required by 35 U.S.C. 101 to describe how or why an invention works, only how to make and use the invention. Under the law it does not matter whether the Appellants developed the invention based on empirical evidence, intuition, or trial-and-error testing for which Thomas A. Edison was well known. It is enough that Appellant teach how to make and use the invention.

In this case, page 13, lines 20-23 provide a very summary explanation of an example of how to use a credit report in underwriting:

"The score is used in conjunction with a user-defined cut off strategy. For example, a user might define that only borrowers with FICO scores greater than 650 indicate sufficient willingness to repay a loan to underwrite the loan."

In other words, one answer to the "how" questions posed by the rejections is that the user define a cut off strategy based on the results of the credit report to determine when to underwrite and to predict the borrower's ability and willingness to repay. Because implementing a cut off strategy based on the credit report, particularly when the credit report includes a score such as a FICO score, is not very complicated, it is believed that the description adequately enables one skilled in the art to make and use the invention.

Accordingly, Appellants request that the rejection of claims 1-20 under 35 U.S.C. § 112, first paragraph be withdrawn.

C. Rejection of Claims 1-20 35 U.S.C. 112, Second Paragraph is Improper

The Examiner has stated that the claimed invention fails to distinctly claim the subject matter which Appellant regards as the invention. Specifically, the Examiner questions the term "collateral identity" and therefore one of skill in the art would not know how to use the claimed invention. However, it is respectfully believed that the term "collateral identity" is used consistently with the ordinary meaning of the terms both in the claims and in the specification that supports the claims. Webster's Online Dictionary provides:

Main Entry: ²**collateral**

Function: *noun*

1 : a collateral relative

2 : property (as securities) pledged by a borrower to protect the interests of the lender

3 : a branch of a bodily part (as a vein)

One skilled in the art of loan processing would clearly understand meaning "2" is used in the context of the claims and specification. Hence, "collateral identity" in a loan application comprise, for example, information that identifies the collateral. As taught on page 15, beginning line 27:

Hence, the borrower is asked to identify the property by address or legal description, if available, identify themselves by name, and to indicate any liens, judgments, or other encumbrances against the collateral property.

As "the property" in this example from the specification corresponds to "the collateral" in the claims, the "collateral identity" would be understood by one of skill in the art to be, for example, an address or legal description. Similarly, the "borrower's identity" called for in claim 1 corresponds to the borrower's name. Accordingly, it is believed that the term "collateral identity" is sufficient to distinctly claim the invention in compliance with 35 U.S.C. 112, second paragraph.

Further, the Examiner asserts that the claims must specify "what types of collateral is needed to satisfy a lender" (sic) in order to comply with 35 U.S.C. 112, second paragraph. However, the claims do not specify what type of collateral will be required as the type of collateral will vary from transaction to transaction, implementation to implementation, and lender to lender. However, it is respectfully believed that one skilled in the loan processing field would understand that in a home equity loan real property will serve as collateral, in an equipment financing, mechanical equipment may be the desired collateral. It is respectfully believed that the claims need not define a particular type of collateral and that the claims as currently presented are in compliance with 35 U.S.C. 112, second paragraph.

Accordingly, Appellants request that the rejection of claims 1-20 under 35 U.S.C. § 112, second paragraph be withdrawn.

D. Conclusion

In view of all of the above claims 1-20 are believed to be allowable and the case in condition for allowance and it is respectfully requested that the Examiner's rejections be overturned.

Respectfully submitted,

Date: May 7, 2004

A handwritten signature in black ink, appearing to read "Stu Langley", is written over a horizontal line.

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IX. APPENDIX OF CLAIMS ON APPEAL

1. A method of processing a secured loan comprising:

5 accepting a loan application from a borrower, the loan application comprising at least a borrower's identity, collateral identity, and stated income of the borrower;

generating a credit request based upon the borrower's identity to obtain a credit report, the credit
10 report including credit information and credit score information;

accessing a property valuation database using the collateral identity;

based upon the credit report, generating an approval
15 of the property valuation from the database;

based upon the credit report, generating a credit approval;

based upon the credit report, underwriting title of the identified collateral;

20 based upon the credit report and the stated income of the borrower, generating an approval of the borrower's ability to repay the loan;

based upon the credit, collateral, and ability to repay approvals, generating loan documentation;

25 transmitting the loan documentation to the borrower; and

closing the loan.

2. The method of claim 1 wherein the secured loan comprises a residential home equity loan.

3. The method of claim wherein the step of generating a credit request comprises generating a request to an online credit reporting agency.

4. The method of claim 1 wherein the step of generating credit approval comprises:

providing a matrix having predefined values relating FICO scores to approvable credit history criteria for the
5 associated FICO score; and

determining if the obtained credit history contents meets the approvable criteria specified by the matrix.

5. The method of claim 1 wherein the step of underwriting title comprises:

providing a matrix having predefined values relating FICO scores to postponeable title underwriting criteria
5 for the associated FICO score;

determining if the obtained credit history contents meets the postponeable title underwriting criteria specified by the matrix; and

when the credit history contents indicate the
10 postponeable underwriting is satisfied, issuing a conditional underwriting commitment before closing and verifying the title status after closing.

6. The method of claim 5 wherein the step of verifying title status comprises

performing a deed search in a title record database to obtain a legal description of the collateral and a
5 recorded name of the collateral owner; and

basing the title underwriting on the deed search without a full title record search.

7. The method of claim 6 wherein the step of verifying title status comprises:

obtaining a current status of lien positions from a title database using the collateral property description;

5 using the deed search results to determine whether title is vested in the borrower; and

using the deed search results to validate a legal description of the collateral property.

8. The method of claim 1 wherein the step of generating an approval of the borrower's ability to repay the loan further comprises:

providing a matrix having predefined values relating
5 FICO scores to whether the stated income in the loan application needs to be verified for the associated FICO score;

determining if the obtained credit history contents meets the FICO score criteria specified by the matrix;
10 and

generating the approval of the borrower's ability to pay without income verification when the obtained FICO score meets the specified criteria.

9. A secured loan processing system comprising:

a loan processing computer system having an interface for receiving a loan application from a borrower, the loan application comprising at least a
5 borrower's identity, collateral identity, and stated income of the borrower;

a credit reporting database in communication with the loan processing computer for receiving a request based upon the borrower's identity and providing a credit
10 report including a FICO score to the loan processing computer system;

a property evaluation database in communication with the loan processing computer for receiving a request based upon the collateral identity and providing a
15 database evaluation report to the loan processing computer system;

an underwriting matrix within the loan processing system having an association between credit report values and approval criteria, wherein the loan processing
20 computer can approve the loan application based upon the application contents, the database evaluation, and credit report without reference to additional direct data.

10. The system of claim 9 further comprising:

a document generation module operable within the loan processing computer system for generating signature
documentation for approved loans; and

5 a closing agent receiving the generated documentation to close the loan.

11. The system of claim 10 further comprising a post closing process implemented by the loan processing computer system for performing a post-closing title verification on the collateral property.

12. The system of claim 9 wherein the underwriting matrix includes criteria for issuing a title underwriting policy based entirely on the credit report results.

13. A secured loan processing system comprising:

means for accepting a loan application from a borrower, the loan application comprising at least a borrower's identity, collateral identity, and stated
5 income of the borrower;

means for generating a credit request based upon the borrower's identity to obtain a credit report, the credit

report including credit information and credit score information;

10 means for accessing a property evaluation database using the collateral identity;

 means for generating a credit approval based upon the credit report;

 means for underwriting title of the identified
15 collateral based upon the credit report;

 means for generating an approval of the borrower's ability to repay the loan based upon the credit report and the stated income of the borrower;

 means for generating loan documentation based upon
20 the credit, title, and ability to repay approvals; and

 means for transmitting the loan documentation to the borrower.

14. The system of claim 13 wherein the secured loan comprises a mortgage equity loan.

15. The system of claim 13 wherein the means for generating a credit request comprises means for generating a request to an online credit reporting agency.

16. The system of claim 13 wherein the means for generating credit approval comprises:

 means for providing a matrix having predefined values relating FICO scores to approvable credit history
5 criteria for the associated FICO score; and

 means for determining if the obtained credit history contents meets the approvable criteria specified by the matrix.

17. The method of claim 13 wherein the means for underwriting title comprises:

means for providing a matrix having predefined values relating FICO scores to postponeable title underwriting criteria for the associated FICO score;

5 means for determining if the obtained credit history contents meets the postponeable title underwriting criteria specified by the matrix; and

means for issuing a conditional underwriting

10 commitment before closing based solely upon the credit history and verifying the title status after closing when the credit history contents indicate the postponeable underwriting is satisfied.

18. The system of claim 17 wherein the means for verifying title status comprises

means for performing a deed search in a title record database to obtain a legal description of the collateral

5 and a recorded name of the collateral owner.

19. The system of claim 17 wherein the means for verifying title status comprises:

means for obtaining a current status of lien positions from a title database using the collateral

5 property description;

means for using the deed search results to determine whether title is vested in the borrower; and

means for validating a legal description of the collateral property using the deed search result.

20. The system of claim 13 wherein the means for generating an approval of the borrower's ability to repay the loan further comprises:

means for providing a matrix having predefined values relating FICO scores to whether the stated income in the loan application needs to be verified for the associated FICO score;

means for determining if the obtained credit history contents meets the FICO score criteria specified by the matrix; and

means for generating the approval of the borrower's ability to pay without income verification when the obtained FICO score meets the specified criteria.